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ARTICLE

Burdens of the past and demands for the future

The role of the international community and the need for Transitional Justice

Sipke de Hoop

The prospects for the Western Balkan countries as far as European Union membership is concerned have crumbled. Most Balkan experts and insiders ask for a new and clear European commitment towards integration, but also criticize Brussels for its inconsistent policy in the past. This article presents the argument why especially transitional justice should become more important in a new European approach towards the Balkans.

Vacláv Havel referred in the early 1990s to a widespread feeling in the East European states that the West had abandoned them after the First and Second World War: ‘Twice in this century Europe has paid a terrible price for the narrow-mindedness and lack of vision of its democracies. Democratic Europe can’t afford a third failure.’^[1] Havel also warned for the consequences of not supporting the integration of East European countries in the European family: ‘[I]f the West doesn’t stabilise the East, the East will destabilise the West’.^[2]

Nowadays one gets the impression that history repeats itself. The prospects for the Western Balkan countries as far as European Union membership is concerned have crumbled and Russia and Turkey gain political influence. Arab states are able to spread a hardline vision of Islam in the Balkans. These external influences form a dangerous mix with the ethnic tensions, the political polarisation and the rise of illiberal and autocratic regimes in the region.

Most Balkan experts and insiders ask for a new and clear European commitment towards integration, but also criticize Brussels for its inconsistent policy in the past with regard to the conditions for integration and also for its approach of prioritising stability. Jasmin Mujanović, a Bosnian political scientist, expressed this view recently as follows: ‘Brussels and Washington nurtured relationships with local “big men” who they believed could deliver key political goods; namely, keeping the peace [...] so long as they delivered on those fronts, the EU and US looked the other way on lack of substantive democratic and economic reforms.’^[3]

In my opinion especially transitional justice should become more important in a new European approach towards the Balkans. According to the UN definition this entails ‘the full range of processes and mechanisms associated with a society’s attempt to come to terms with a legacy of large-scale abuses, in order to ensure accountability, serve justice and achieve reconciliation’.^[4] During the last decades, transitional justice has increasingly become an indispensable component of the international efforts to establish peace, security and democracy.

The peacebuilding agenda and democratisation

Helping states to recover from conflict or supporting their transition to a stable democratic state is a difficult and very complex process. In a report of the UN Secretary General from 2004 it was already made clear that peace and stability can only prevail ‘if the population perceives that politically charged issues, such as ethnic discrimination, unequal distribution of wealth and social services, abuses of power, denial of the right to property or citizenship and territorial disputes between states, can be addressed in a legitimate and fair manner’.^[5]



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Zagreb, 2013. “For the people on the ground, the physical, political, legal and psycho-social aspects of reconstruction are interlinked.”

For the people on the ground, the physical, political, legal and psycho-social aspects of reconstruction are interlinked: drafting a democratic constitution is not only an act of democratic institution building, but also entails a rule of law component; the prosecution of war crime perpetrators is not only an important function of the rule of law, but may also contribute to post-conflict reconciliation between former adversarial ethnicities.

Coming to terms with large-scale abuses, especially in a context marked by devastated institutions, exhausted resources, diminished security and a traumatized and divided society, is an overwhelming task. Not in the least because the Western Balkans post-conflict transition overlapped with post-authoritarian transition, nation-building, state-building and integration into the EU, while the ghosts from the dark past were still haunting the region. For the new countries to successfully embark upon this more peaceful and democratic future, the wounds of the recent past had to be addressed.

A backward region and a new division of Europe

In Europe the conflicts in the Balkans mark the beginning and the end of the twentieth century. The disintegration of the Ottoman Empire was accompanied by ethnic cleansing, flows of refugees and two Balkan wars. The dissolution of communist Yugoslavia also degenerated in a number of bloody conflicts with more than 150,000 victims, mostly citizens. Ending the violence in the Balkans, building on enduring peace, transforming states from socialism to democracy and market economy (exorcising the ghosts of a socialist and authoritarian past) and integrating the countries in South Eastern Europe into the European family has been and still is a challenging endeavour.

Countries in South Eastern Europe faced many difficulties in their process of transition, but did not get much support from Brussels in the first decennium after 1989

There was not much to build on either. Thanks to five centuries of Ottoman Yoke, important European developments like the Renaissance, the Enlightenment, Humanism and the Industrial Revolution passed by. After their independence, these countries did not develop into modern, democratic states with a lively civic culture. Before the communists ruled for almost forty-five years, most Balkan countries were governed by authoritarian and nationalist rulers.

Political violence, intolerance of minorities and economic backwardness are often mentioned characteristics of the region. Apart from a problematic past, the absence of a blueprint for a triple transition and the already mentioned long and tricky road of peacebuilding, the negative image of the region as a dark, uncivilized, violent place constituted in the beginning a serious obstacle for full Western engagement in the Balkans and still hinders its integration.

The Balkans was presented as a region somewhere at the corner of Europe where democratic values and civil society were far away. Countries in South Eastern Europe faced many difficulties in their process of transition, but did not get much support from Brussels in the first decennium after 1989. In the year 2000 the Club of Three, an informal network of academics and representatives from media, business and governance circles concluded: 'The fall of the Berlin Wall made an end to the East-West division, but created a new division, between Europe and the Balkans.'^[6]

European policy

Naturally, not only the negative reputation, the burdensome communist legacy, the Western images and the violent disintegration of Yugoslavia were responsible for the lack of interest from the West and the isolated and backward position of the region. The war and the Western sanctions created a climate and a context where Mafiosi, warlords and nationalists could flourish. This became a formidable obstacle for democratisation, good governance, the rule of law and a well-functioning market economy.

After the Kosovo War, European policymakers came to the conclusion that they should strongly support the region in its transition process. Brussels offered the Balkan countries a concrete perspective on European integration. Their financial, political, military and

diplomatic support has been successful from the perspective that we have not witnessed a major return to armed conflict in this corner of Europe. Some of the South Eastern European countries (Bulgaria, Romania and Croatia) have even managed to fulfil the criteria for EU membership. Other countries still have a long way to go.

Generally, in academic circles there is still doubt ‘if institutions and people have advanced enough to accept new sets of pluralist values, so that democracy can be a self-sustaining feature in the region’.^[7] Especially since important elements of a consolidated democracy, including a lively civil society, an efficient state bureaucracy, a political society and a rule of law have never existed.

One of the main formal objectives of the EU’s policy in the Western Balkans is ‘to underpin democracy and the rule of law, human rights, civil society and the media’.^[8] Because most states in the region (Bosnia and Herzegovina, Croatia, Serbia, Kosovo and Macedonia) are post-conflict societies, the integration process necessarily needs to address some of the legacies of these conflicts, in particular economic reconstruction, building the rule of law, political institution-building, community-building (reconciliation, trust-building and civil society-building) and regional cooperation.

In reality, the priorities were: stability first, development second and democracy third. Within that third pillar of democracy, only relatively short the focus has been on shifting to rule of law and community building. The EU mainly invested in socioeconomic development in order to create favourable conditions for democratisation. Support for democratic institution-building and capacity-building represented only a relatively small share of the total expenditures.^[9] Even from a conventional perspective on transitional justice and peacebuilding, the international efforts towards democratisation, state building and rule of law received their fair share of criticism.



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“Opinion polls from the region still show strong support for national heroes like the Bosnian Serb general Ratko Mladić.”

Roots of a failed transition

Many academics addressed the troublesome transition to democracy. The weak democratic culture is often mentioned as one of the main features of the problem, according to Cohen and Lampe, due to ‘the region’s deeply embedded tradition of political interference in administrative decisions, and the lack of a clear division between the public and private spheres’^[10] The Bulgarian historian and social scientist Ivan Krastev already mentioned ‘the prevalence of weak states as the dominant feature of countries in South Eastern Europa’^[11]

A significant percentage of citizens in Balkan societies become more and more sceptical of the ‘role model’ and values of the West and the EU

According to the Croatian philosopher Boris Buden the countries of the Western Balkans are going through a democratic transition that has not delivered on its promises: ‘The process of democratization has resulted in widespread disenchantment and disillusionment with democracy, as well as apathy and political pessimism on the part of a significant element of the populations, which has given old authoritarian values space to flourish.’^[12] The Bosnian historian and political scientist Vedran Džihic concludes that ‘Balkan societies are still to a great extent defined by the dominance of ethno-nationalism and collective values and norms’^[13]

Opinion polls from the region still show strong support for national heroes like the Bosnian Serb general Ratko Mladić and Ante Gotovina. The combination of these nationalist values and the existence of weak state structures can become a serious problem, especially since there are still a number of ethnic conflicts in the region. Some of these Balkan states, e.g. BiH, Kosovo and Macedonia, are still contested in their existence from within or by their neighbours. Good neighbourly relations, the development of democratic values and efforts for reconciliation are still very much needed.

Unfortunately, a significant percentage of citizens in Balkan societies become more and more sceptical of the ‘role model’ and values of the West and the EU. In general, support for EU integration also recently declined because of the long and complicated implementation process that precedes the actual integration. This is where ‘enlargement fatigue’ within the EU meets ‘evaluation fatigue’ in the Balkans. This fatigue is alarming, because further postponing the accession process undermines the still fragile and unfinished transition process. Media outlet *BalkanInsight*, that closely follows recent events in the region, concluded that ‘recent history has taught us that political and economic problems can quickly turn to security ones, which are harder and more expensive to solve’^[14]

This may especially be true when trust and reconciliation have not been re-established among the ethnic communities in countries and among the countries and when history is once more used as a political instrument. A perfect example is the Project Skopje 2014 where the focus on Macedonian identity and history has led to conflicts with the Albanian minority community and with the Bulgarian and Greek neighbours. Dealing with the past can bring justice, but just as well renewed division.

Dealing with the past...

Not exclusively in the Balkan region but everywhere, conflicting memories cause debates on how the past should be remembered and acted upon. Problems arise when this does not take the form of a real debate, but instead excludes certain narratives of the past and silences minority groups and victims. To deal with the past means first of all to acknowledge one another's conflicting memories (that could be of the civil war in Bosnia, but also of the communist dictatorships or even further back in history). This a huge challenge in itself, particularly in the Balkans. Coming to terms with one's own past, dealing with this past, reconciliation, transitional justice in all meanings of the definition, require time, a stable state and above all, civic-political will. These three conditions are hardly present in the Balkans.^[15]

Experts in this field state that the process of coming to terms with the past has barely begun in the Yugoslav successor states and most 'governments in South Eastern Europe have not done their best to bring accused war criminals to trial, nor have they fostered the involvement of civil society in coming to terms with the past'.^[16] However, although we need to be critical of the indeed very limited achievement of transitional justice in the Western Balkans, there are some positive points as well. Most importantly, many consider the process of retributive justice in the Western Balkans a major breakthrough in the history of international law. This justice, revolving around prosecution of perpetrators as opposed to restorative justice that is focused on victims' needs, was addressed through the International Criminal Tribunal for the former Yugoslavia (ICTY).



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"Conflicting memories cause debates on how the past should be remembered and acted upon."

From the mere perspective of retributive justice, transitional justice in the region has thus been successful. Yet, in particular during the last few years, criticism has targeted both the ICTY's work and the international community's approach to the court. The choice to put

suspects on trial outside their own countries, some argue, contributed to the lack of ownership in the Western Balkans of ‘their’ transitional justice process. Recently, it has also been stressed that while the focus of the ICTY and its supporters was on old-fashioned criminal justice, the needs for commemoration, truth and reconciliation have been forgotten.^[17] Jens Woelk, an expert in comparative international law, states that ‘[...] without clarifications and ample debate on the recent past, true and lasting democratization will be difficult.’^[18]

Many consider the process of retributive justice in the Western Balkans a major breakthrough in the history of international law

It is precisely here where the shortly addressed or mentioned, but complex fields of peacebuilding, transformation, integration, democracy-building, memory politics and transitional justice meet. According to Wolfgang Petritsch, former special envoy for the EU in Kosovo, ‘conflicting issues of statehood like those in Kosovo and Bosnia and Herzegovina, belated state building, frequent re-negotiation of the national question, pervasive political manipulation of the past, political elites exclusively engaged in the expansion of their power’ are the main problem, leading to ‘an enduring transformation crisis’ and to a ‘frustrated search for identity’.^[19]

... and contextual factors complicating it

Petritsch presents four contextual factors which hinder the dealing with the past: first, a post-war environment that is still largely influenced by ethno-nationalist argumentation and mistrust of the other; secondly, a majority of citizens that do not really believe facing the past will bring them any benefits or change their dismal social and economic status – according to Petritsch, that is the main reason they stick to ‘divisive narratives and self victimization’; thirdly, the degree of trust people have in the state and its representatives has become rather small, particularly during the past years, when the region was hit hard by the effects of the global financial and economic crisis; fourthly, in an environment where the local ‘others’ (Albanians, Bosniaks, Croats or Serbs, Roma) are still being demonised, there is still an irrational fear of losing one’s own identity.

It is key the EU arrives at a broader understanding of transitional justice and reconciliation moving beyond the very narrow focus on ICTY-cooperation

Woelk explained the difficulties among Balkan societies to face the past by explicitly linking it to an individual and ideological level: ‘... discussion, analysis and elaboration of the past [is] difficult, as these questions will not only and inevitable raise the question of guilt related to individual and collective action, but also touch the very (ideological and ethnic) foundations and myths of the new states’.^[20] He also pointed to the international responsibility: ‘[...] So far the need for reconciliation has not been expressly acknowledged, addressed or encouraged by the EU. But it does not only regard the past: it is also fundamental for stability and the future, not least as a precondition for resolving existing conflict among the states in the region as well as among different groups within the states’.^[21]

Admittedly, the EU has had its share in transitional justice by making ICTY-cooperation an absolute condition for accession in the case of Serbia, BiH and Croatia. EU reports repeated this supposed direct link between the accession condition and reconciliation many times.^[22] However, as mentioned before, retributive justice is only one part of the full range of transitional justice processes that can eventually stimulate reconciliation. It is therefore key the EU arrives at a broader understanding of transitional justice and reconciliation that moves beyond the very narrow focus on ICTY-cooperation.

Progress in this field is essential, because it is connected to the larger process of peacebuilding, reconstruction and transition to democracy. In the words of Petritsch: ‘Only when people feel that the evils of the past will not return and believe that things are moving in the right direction will they be in a position to loosen the bonds of the past, relinquish the impulse for revenge and realign their mindsets towards the future. To make this possible, a proper political framework had to be established, including stable statehood, a functioning economy and accountable politics.’^[23]

A clear integration perspective and full support from Brussels therefore is needed, firstly to commit countries from the Balkans to peaceful neighbourly relations, secondly to prevent a new division of Europe and finally to make sure that the East will not destabilise the West.

Noten

[1] *The Guardian*, January 26th, 2017.

[2] Vacláv Havel, ‘NATO’s quality of life’, *The New York Times*, May 13th, 1997.

[3] ‘EU struggles to regain credibility in western Balkans’, available at: <https://www.ft.com/content/bc829a82-03e4-11e7-ace02ef0def9> (accessed: 3-05-2017).

[4] Definition derived from United Nations Guidance Note of the Secretary-General, ‘United Nations Approach to Transitional Justice’ (https://www.un.org/%20ruleoflaw/files/TJ_Guidance_Note_March_2010FINAL.pdf), (UN 2010), (accessed: 2-05-2017) 2.

[5] United Nations Security Council, ‘Report of the Secretary-General, The rule of law and transitional justice in conflict and post-conflict societies’ (http://www.un.org/en/ga/search/view_doc.asp?symbol=S/2004/616), S/2004/616,’ (UNSC 2004), (accessed: 3-05-2017) 3.

[6] Club of Three, Bertelsmann Stiftung, ‘The Balkans and new European responsibilities’ (<http://www.cap.lmu.de/download/2000/balkan1.PDF>), Strategy Paper presented to a special meeting of The Club of Three and the Balkans’ (Brussels, 2000), (accessed: 1-05-2017) 3.

[7] Branislav Radeljić, 'Democratizing and Europeanizing the Western Balkans: Contexts, Challenges and Prospects', *East European Politics*, vol. 29 (2013), no. 2, p. 2.

[8] Sonja Grimm & Okka Lou Mathis, 'Stability first, development second, democracy third: The European Union's policy towards the post-conflict Western Balkans, 1991-2010', *Europe-Asia Studies*, vol. 67 (2015), no. 6, pp. 917-919.

[9] Between 1991 and 2010 the EU spent in total 11,84 billion in Western Balkans, but half of the contributions was spent on social-economic development; see: Sonja Grimm & Okka Lou Mathis, 'Stability first, development second, democracy third: The European Union's policy towards the post-conflict Western Balkans, 1991-2010', *Europe-Asia Studies*, vol. 67 (2015), no. 6, p. 929.

[10] Lenard J. Cohen & John R. Lampe, *Embracing Democracy in the Western Balkans: from Post-conflict Struggles toward European Integration* (Washington, 2011), p. 131.

[11] Ivan Krastev, 'De-Balkanising the Balkans: What Priorities?', *The International Spectator, Italian Journal of International Affairs*, vol. 50 (2015), no. 4, p. 289.

[12] Quoted in Vedran Džihic, 'Dilemmas of Young Democracies in the Western Balkans. 20 Years after the Dissolution of Yugoslavia', in: Vedran Džihic & Daniel Hamilton (eds.), *Unfinished Business. The Western Balkans and the International Community* (Washington, 2012), p. 11.

[13] Vedran Džihic, 'Dilemmas of Young Democracies in the Western Balkans. 20 Years after the Dissolution of Yugoslavia', in: Vedran Džihic & Daniel Hamilton (eds.), *Unfinished Business. The Western Balkans and the International Community* (Washington, 2012), p. 12.

[14] Balkan Insight, 'Time to try a third way in Bosnia' (5 March, 2014), available at: <http://www.balkaninsight.com/en/article/wanted-new-international-approach-for-balkans> (accessed: 1-05-2017).

[15] W. Petritsch, 'Confronting conflicting memories in the Balkans', in: Vedran Džihic & Daniel Hamilton (eds.), *Unfinished Business. The Western Balkans and the International Community* (Washington, 2012), p. 21.

[16] Dimitri A. Sotiropoulos, 'Civil Society and Transitions in the Western Balkans', *Southeast European and Black Sea Studies*, vol. 16 (2016), no. 2, p. 337.

[17] Olivera Simić, 'The European Union and the Western Balkans. Time to Move Away from Retributive Justice?', in: Soeren Keil & Zeynep Arkan (eds.), *The EU and Member State Building. European Foreign Policy in the Western Balkans* (Abingdon and New York, 2015), p. 197; Iva Vukušić, 'Successes and Failures of Transitional Justice in BiH. The Case of the ICTY', in: Soeren Keil & Valery Perry (eds.), *State Building and Democratization in Bosnia and Herzegovina* (Farnham and Burlington, 2015), pp. 159-161.

[18] Jens Woelk, 'EU-member State-Building in the Western Balkans: (prolonged) EU-protectorates or new model of sustainable enlargement?', *Nationalities Papers. The Journal of Nationalism and Ethnicity*, 3 (2013), p. 472.

[19] W. Petritsch, 'Confronting conflicting memories in the Balkans', in: Vedran Džihic & Daniel Hamilton (eds.), *Unfinished Business. The Western Balkans and the International Community* (Washington, 2012), p. 22.

[20] Jens Woelk, 'EU-member State-Building in the Western Balkans: (prolonged) EU-protectorates or new model of sustainable enlargement?', *Nationalities Papers. The Journal of Nationalism and Ethnicity*, 3 (2013), p. 478.

[21] Jens Woelk, 'EU-member State-Building in the Western Balkans: (prolonged) EU-protectorates or new model of sustainable enlargement?', *Nationalities Papers. The Journal of Nationalism and Ethnicity*, 3 (2013), p. 478.

[22] See for example: European Commission, 'Communication from the Commission to the European Parliament and the Council. Enlargement Strategy and Main Challenges (http://ec.europa.eu/enlargement/%20pdf/key_documents/2011/package/strategy_paper_2011_en.pdf) 2011-2012 COM(2011) 666 final', (Brussels 2011) 3, (accessed: 1-05-2017).

[23] W. Petritsch, 'Confronting conflicting memories in the Balkans', in: Vedran Džihic & Daniel Hamilton (eds.), *Unfinished Business. The Western Balkans and the International Community* (Washington, 2012), p. 26.

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